

**REVENUE DEPARTMENT[701]**

**Notice of Intended Action**

**Proposing rule making related to bundled transactions and providing an opportunity for public comment**

The Revenue Department hereby proposes to adopt new Chapter 216, “Bundled Transactions,” and amend Chapter 231, “Exemptions Primarily of Benefit to Consumers,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 421.14.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 423.2 and 423.3; 2018 Iowa Acts, Senate File 2417; and 2020 Iowa Acts, House File 2641.

*Purpose and Summary*

This rule making proposes to adopt new Chapter 216 on bundled transactions to implement the adoption of language by the General Assembly in 2018 Iowa Acts, Senate File 2417, to fully incorporate the definition of “bundled transaction” to be used by members of the Streamlined Sales and Use Tax Agreement, including Iowa. This proposed rule making also incorporates the addition of “specified digital products” into the bundled transaction provision in the Iowa Code, pursuant to changes to the Iowa Code made by 2020 Iowa Acts, House File 2641. Additionally, this rule making proposes to amend the Department’s existing rule on sales of candy to remove outdated language pertaining to bundled transactions.

Currently, outdated bundled transaction language is incorporated throughout the Department’s sales and use tax rules. This rule making creates a single, centralized chapter for rules that implement the current law pertaining to bundled transactions. While the Department proposes to remove some of this language from Chapter 231 in this Notice, the Department will pursue additional rule making in the near future to clean up the outdated bundled transaction language throughout its administrative rules.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa. The Legislative Services Agency estimates for 2018 Iowa Acts, Senate File 2417, and 2020 Iowa Acts, House File 2641, did not address the impact to the General Fund from sales tax collections due to these bundled transaction changes.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 701—7.28(17A).

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 30, 2021. Comments should be directed to:

Tim Reilly  
Department of Revenue  
Hoover State Office Building  
P.O. Box 10457  
Des Moines, Iowa 50306  
Phone: 515.782.0535  
Email: [tim.reilly@iowa.gov](mailto:tim.reilly@iowa.gov)

### *Public Hearing*

If requested, a public hearing at which persons may present their views orally or in writing will be held as follows:

March 30, 2021  
2 to 3 p.m.

Via video/conference call

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Persons who wish to participate in the video/conference call should contact Tim Reilly before 4:30 p.m. on March 15, 2021, to facilitate an orderly hearing. A conference call number will be provided to participants prior to the hearing.

### *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** 701—Chapter 216:

#### CHAPTER 216

#### BUNDLED TRANSACTIONS

**701—216.1(423) Taxability of bundled transactions.** The sales price of a bundled transaction is subject to tax if any product included in the bundled transaction would be taxable if sold separately. For purposes of this rule, products include tangible personal property, services, and specified digital products and exclude real property and services to real property.

**701—216.2(423) Bundled transaction.** A “bundled transaction” is the retail sale of two or more products where the products are otherwise distinct and identifiable and the products are sold for one non-itemized price.

**216.2(1) Distinct and identifiable product.** “Distinct and identifiable product” does not include any of the following:

*a.* Packaging or other materials that accompany the retail sale of the products and are incidental or immaterial to the retail sales of the products. Packaging or other materials include, but are not limited to, containers, boxes, sacks, bags, bottles, envelopes, wrapping, labels, tags, twine, garment hangers, and instruction guides.

EXAMPLE 1: Seller Z provides paper and plastic bags for purchasers to use to carry away their purchased items. The bags are incidental or immaterial to the retail sales of the products and are not

distinct and identifiable products. Seller Z's retail sale of purchased items in the provided bags does not constitute a bundled transaction.

EXAMPLE 2: Seller X sells brownies and offers purchasers the option of adding a premium box for an increased price. The sales price of the brownies is the same whether they are sold on their own or with a standard box, but the total sales price increases if the purchasers select a premium box. The premium box is distinct and identifiable from the food product because it requires separate shopping preferences and product selection by the purchaser and is not standard with every order of food product. The retail sale of the brownies and the premium box may constitute a bundled transaction if the other requirements pursuant to Iowa Code section 423.2(8) are satisfied.

EXAMPLE 3: Seller A offers purchasers the option to buy reusable, long-lasting grocery bags to use to carry away purchased grocery items. If the reusable grocery bags are purchased with other items and separately itemized, they are taxable and the sale does not constitute a bundled transaction.

b. A product that is provided free of charge to the consumer in conjunction with the required purchase of another product, if the sales price of the other product does not vary depending on whether the product provided free of charge is included in the transaction. Examples include a free car wash with the purchase of gasoline or free dinnerware with the purchase of groceries.

c. Items specified in the definition of "sales price" in Iowa Code section 423.1.

**216.2(2) One non-itemized price.** "One non-itemized price" does not include the following:

a. A price that is separately identified by product on a binding sales document, or other sales-related documentation, that is made available to the customer in paper or electronic form, including but not limited to an invoice, a bill of sale, a receipt, a contract, a service agreement, a lease agreement, a periodic notice of rates and services, a rate card or a price list.

b. A price for which the sales price varies or is negotiable based on the purchaser's selection of the products included in the transaction even if the seller only provides one price on its invoice to the purchaser.

EXAMPLE 1: Seller A sells a bakery item as part of a meal which consists of taxable prepared food. The purchaser selects items from a list of options of prepared food to be included in the meal. The individual items of the meal are not itemized on the receipt and the meal is always the same price, notwithstanding the items selected by the purchaser. The meal is sold for one non-itemized price, and the sales price of the meal is subject to tax as a bundled transaction.

EXAMPLE 2: Seller B enters into a contract with buyer D to provide various information technology services. Buyer D selects the information technology services it wants from seller B. Through negotiation, buyer D and seller B agree on a price based on the services selected and seller B bills buyer D one price for all of the services, some of which are taxable and some of which are not taxable. Although the invoice from seller B to buyer D only contains one price for all of the services, since the price was based on the products selected by buyer D, the price is not one non-itemized price and the sale does not constitute a bundled transaction.

**701—216.3(423) Transactions not taxable as bundled transactions.** Generally, the entire sales price from a bundled transaction is subject to sales tax. However, the transactions described in this rule are not taxable as bundled transactions:

**216.3(1) Sales involving mixed tangible personal property and services.** The retail sale of tangible personal property or specified digital product and a service, if the tangible personal property or specified digital product is essential to the use of the service, and provided exclusively in connection with the service, and if the true object of the transaction is the service.

EXAMPLE: Seller A charges customer B for computer programming services where customer B is also given a backup disk and instruction manual. The true object of the transaction is the provision of the programming services. Seller A is selling nontaxable services and is not making a sale of a bundled transaction. Iowa sales tax is not due on the programmer's charge for services; sales tax is due on seller A's purchases of tangible personal property used to fulfill the service.

**216.3(2) Sales involving services.** The retail sale of services, if one of the services is essential to the use or receipt of a second service, and provided exclusively in connection with the second service, and

if the true object of the transaction is the second service. If the transaction is not a bundled transaction as a result of this exclusion, then the true object of the transaction will be the retail sale of the second service and should be taxed accordingly.

**216.3(3) True object test.** The true object of a transaction is the main product that is the subject of the transaction. Determining the true object of a transaction is a fact-based inquiry and shall be made on a case-by-case basis. Factors that may be considered in determining the true object of a transaction include, but are not limited to, the nature of the seller's business and purchaser's reason for making the purchase.

**216.3(4) Sales involving "de minimis" taxable products.** A transaction that includes taxable and nontaxable products and the seller's purchase price or sales price of the taxable products is de minimis. "De minimis" means the seller's purchase price or sales price of the taxable products is 10 percent or less of the total purchase price or sales price of the bundled products. A seller shall use either the seller's purchase price or seller's sales price of the products to determine if the taxable products are de minimis. A seller may not use a combination of the seller's purchase price and seller's sales price of the products to determine if the taxable products are de minimis.

EXAMPLE 1: Seller H sells a coupon book that includes a packet of stickers for one non-itemized price of \$75. The packet of stickers is not provided free of charge. Seller H purchased the stickers, a taxable product, for \$2 per packet, which does not exceed 10 percent of the total purchase price of the coupon book and stickers. Seller H's sale of the coupon book and stickers is not a bundled transaction, and the sales price of \$75 is not subject to tax.

EXAMPLE 2: Technology Company F (company F) sells access to a day-long live webinar about the latest trends occurring in the technology industry for one non-itemized price of \$200. The webinar, which does not allow people viewing the presentation to submit questions, is not subject to Iowa sales tax. The customer also receives a smartwatch that is included in the payment of the webinar but is not provided free of charge. Company F's sales price of the smartwatch is \$50, which exceeds 10 percent of the total sales price of the fee. The watch is subject to sales tax by the customer. Because company F's purchase price of the watch is not de minimis, the \$200 transaction is a bundled transaction and is subject to tax.

**216.3(5) Sales involving taxable and exempt food or medical products.** The retail sale of exempt tangible personal property and taxable tangible personal property where all of the following apply:

- a. The transaction includes food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, prosthetic devices, or medical supplies; and
- b. The seller's purchase price or sales price of the taxable tangible personal property is 50 percent or less of the total purchase price or sales price of the bundled tangible personal property. Sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the 50 percent determination for a transaction.

EXAMPLE: Seller F offers its customers a package containing two prepared hot dogs and five frozen hot dogs. The sales price for the two prepared hot dogs is \$5, and the sales price of the five frozen hot dogs is \$10. The package is sold for one non-itemized price of \$15. The sales price of the package is not taxable because the sales price of the taxable items (the two prepared hot dogs) is 50 percent or less of the total sales price of the package.

These rules are intended to implement Iowa Code section 423.2(8).

ITEM 2. Amend rule 701—231.4(423) as follows:

**701—231.4(423) Sales of candy.**

**231.4(1) Definitions.** ~~Sales of candy were excluded from exemption prior to July 1, 2004; however, the definition of "candy" applicable to the exclusion was slightly different from the definition set out in this rule. Reference rule 701—20.1(422,423). This rule and the following definitions apply to sales of candy on or after July 1, 2004.~~

- a. to g. No change.

**231.4(2)** No change.

**231.4(3)** *Bundled transaction including candy.* ~~“Bundled transaction” is defined as the retail sale of two or more products, except real property and services to real property, where (1) the products are otherwise distinct and identifiable and (2) the products are sold for one non-itemized price.~~

*a. Candy and food.* Products that are a combination of items that are defined as “candy” under this rule and items that are defined as “food and food ingredients” under rule 701—231.3(423) are “bundled transactions” when the items are distinct and identifiable and are sold for one non-itemized price, unless the seller’s sales price or purchase price of the candy accounts for 50 percent or less of the seller’s sales price or purchase price of the bundled transaction as provided under Iowa Code section 423.2(8) “d”(4). For example, a bag of multiple types of individually wrapped bars that is sold for one price is two or more distinct and identifiable products sold for one non-itemized price. For purposes of determining whether such a bag of individually wrapped bars is a “bundled transaction,” the following criteria apply:

(1) Ingredients listed separately.

1. If a package contains individually wrapped bars, drops, or pieces and the product label on the package separately lists the ingredients for each type of bar, drop, or piece included in the package, those bars, drops, or pieces that have “flour” listed as an ingredient are “food and food ingredients” and those bars, drops, or pieces which do not have “flour” listed as an ingredient are “candy.” The determination of whether the package as a whole meets the definition of “bundled transaction” is based on the percentage of bars, drops, or pieces that meet the definition of “food and food ingredient” as compared to the percentage of bars, drops, or pieces that meet the definition of “candy.”

2. Determining the percentage. For purposes of determining the percentage of the sales price or purchase price of the bars, drops, or pieces that meet the definition of “candy” as compared to all of the bars, drops, or pieces contained in the package, the retailer may presume that each bar, drop, or piece contained in the package has the same value.

3. Presumption of product amount. A retailer may presume that there is an equal number of each type of product contained in the package, unless the package clearly indicates otherwise.

~~EXAMPLE 1: Retailer A sells a package that contains 100 total pieces of food and food ingredients. There are ten different types of foods and food ingredients in the package. Eight of the types of food and food ingredients included in the package meet the definition of “candy,” while two of the types included do not meet the definition of “candy.” It is a reasonable presumption that 20 (2/10 times 100) of the pieces are not “candy” and 80 (8/10 times 100) of the pieces are “candy.” Therefore, since 80 percent of the product is “candy,” the retailer shall treat the entire package as a bundled transaction containing primarily “candy.” Sales tax is due on the sales price of the entire package. See Iowa Code section 423.2(8).~~

EXAMPLE 2: Retailer B sells bulk food and food ingredients by the pound. Each food and food ingredient is in a separate bin or container. Some of the food and food ingredients are “candy” and some of them are not because they contain flour. However, regardless of the items chosen, the retailer charges the customer \$3.49/lb. Customer C selects some items that are “candy” and some that are not and puts them in a bag. Since some of the items in the bag are “candy,” the retailer shall treat the entire package as a bundled transaction containing primarily “candy,” unless the retailer ascertains that 50 percent or less of the items in the bag are “candy.” Even if the retailer ascertains that 50 percent or less of the items in the bag are “candy,” sales tax is due on the sales price of the entire package the sales price or purchase price of the candy in the bag is less than 50 percent of the sales price or purchase price of the entire bag. See Iowa Code section 423.2(8).

(2) Ingredients listed together. If a package contains individually wrapped bars, drops, or pieces and all of the ingredients for each of the products included in the package are listed together, as opposed to being listed separately by each product included as explained in subparagraph (1) above, and even if the ingredient lists “flour” as an ingredient, the product will be treated as “candy,” unless the retailer is able to ascertain that 50 percent or less of the products are “candy.” Even if the retailer ascertains that 50 percent or less of the items in the bag are “candy,” sales tax is due on the sales price of the entire package the sales price or purchase price of the candy in the package is less than 50 percent of the sales price or purchase price of the entire bag. See Iowa Code section 423.2(8).

The retailer may presume that each bar, drop, or piece contained in the package has the same value. The retailer may presume that there is an equal number of each type of product contained in the package, unless the package clearly indicates otherwise.

*b. Combination of ingredients.* Products whose ingredients are a combination of various unwrapped food ingredients that alone are not “candy,” along with unwrapped food ingredients that alone are “candy,” such as breakfast cereal and trail mix with candy pieces, are considered “food and food ingredients,” ~~but~~ and are not “candy.” Sales of these products are not “bundled transactions” because there are not two or more distinct and identifiable products being sold. The combination of the ingredients results in a single product.

This rule is intended to implement ~~2014 Iowa Code subsection~~ sections 423.2(8) and 423.3(57).